

Doc Code: AP.PRE.REQ

Approved for use through 04/30/2008. PTO/SB/03 (07-05)
 U.S. Patent and Trademark Office, U.S. DEPARTMENT OF COMMERCE
 OMB 0651-0031

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) 4366-161	
via EFS-Web		Application Number 10/813,509	Filed March 29, 2004
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on <u>April 28, 2008</u>		First Named Inventor David Clarence Mullen	
Signature <u>Leslie M. Frankel</u>		Art Unit 2609	Examiner NGUYEN, KHAI N.
Typed or printed name <u>Leslie M. Frankel</u>			

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).
 Note: No more than five (5) pages may be provided.

I am the

☐ applicant/inventor.

☐ assignee of record of the entire interest.
 See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
 (Form PTO/SB/96)

☒ attorney or agent of record.
 Registration number 44,189

☐ attorney or agent acting under 37 CFR 1.34.
 Registration number if acting under 37 CFR 1.34 _____

Signature Bradley M. Knepper
 Typed or printed name
 (303) 863-9700
 Telephone number
 April 28, 2008
 Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.
 Submit multiple forms if more than one signature is required, see below.

☐ *Total of _____ forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

Privacy Act Statement

The Privacy Act of 1974 (P.L. 93-579) requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether disclosure of these records is required by the Freedom of Information Act.
2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspection or an issued patent.
9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re the Application of:

David Clarence Mullen

Serial No.: 10/813,509

Filed: March 29, 2004

Atty. File No.: 4366-161

For: "METHOD AND APPARATUS TO
FORECAST THE AVAILABILITY OF A
RESOURCE" (As Amended)

) Group Art Unit: 2614
)

) Examiner: NGUYEN, KHAI N.
)

) Confirmation No.: 7396
)

) REASONS SUPPORTING PRE-APPEAL
) BRIEF REQUEST FOR REVIEW
)

CERTIFICATE OF TRANSMISSION

I HEREBY CERTIFY THAT THIS CORRESPONDENCE IS
BEING TRANSMITTED VIA THE OFFICE ELECTRONIC
FILING SYSTEM IN ACCORDANCE WITH 37 CFR
§1.6(a)(4) ON April 28, 2008

SHERIDAN ROSS P.C.

BY: *Sheridan Ross*

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

The following sets forth Applicants' Reasons In Support of the Pre-Appeal Brief Request For Review submitted herewith.

The Examiner's objections omit essential elements needed to reject the pending claims. In particular, the cited references do not teach, suggest or describe calculating first and second different probabilities for first and second segments of a task in order to forecast the availability of a resource for a work assignment as claimed. In addition, the Examiner's rejections on the grounds that certain of the claims are directed to non-statutory subject matter has no basis in the law. It is submitted that all claims are in condition for allowance.

The Examiner rejects claims 1-6 and 9-23 under 35 U.S.C. §103 as being obvious over U.S. Patent No. 5,327,490 to Cave et al. ("Cave '490") in view of U.S. Patent Application Publication No. 2003-0018762 to Mullen ("Mullen"). In addition, Claims 7 and 8 stand rejected under 35 U.S.C. § 103 as being obvious over Cave '490 in view of Mullen and further in view of U.S. Patent No. 5,570,419 to Cave et al. ("Cave '419").

The present invention is generally directed to forecasting the future availability of a resource or agent for a new work assignment. More particularly, the probability of completing a task that can be broken into a number of differentiated segments is determined by separately determining the probabilities of each of the differentiated segments. For example, and without introducing limitations to the broader claims, an agent in a call center may be assigned to complete tasks that can be broken into a first segment during which the agent is speaking with a customer or other party ("talk time") and a second segment during which the agent is performing paper work following an instance of talk time ("wrap-up time"). A probability for each of these segments is then separately calculated. After the separate probabilities of the separate segments included in the task have been calculated, they are combined to obtain a probability related to whether the agent will be available within the forecast horizon. The references cited in the Office Action do not teach, suggest or describe segmenting a task into multiple segments and separately determining the probability that each segment will be completed within a forecast horizon, in connection with obtaining an overall probability that a resource will be available within that forecast time horizon as claimed.

The primary reference, U.S. 5,327,490 to Cave, is generally directed to a system and method for controlling call placement rates for telephone communication systems. Cave does discuss using statistical parameters in connection with controlling call placement rates. (Cave, abstract.) However, contrary to the Examiner's argument in the Advisory Action, Cave does not disclose determining a probability of completing different segments of a task within a selected forecasted horizon. In particular, the Examiner cites to column 11, lines 30-37 with respect to segmenting a task. However, this portion of Cave simply states that the system knows when different events related to the application of a predictive calling algorithm occur. Cave does not describe computing separate probabilities for different segments of a task. Indeed, the portion of Cave cited by the Office Action with respect to such disclosure instead discusses determining the average amount of time that an agent is in use in order to select a time to initiate an outgoing call. (Cave '490, col. 2, ll. 27-43.) An amount of time is not the same as a probability. Therefore, Cave does not teach, suggest or describe determining for each of a plurality of segments of a single task a probability of completion within a target line, or combining determined first and second probabilities to obtain a probability that an agent will be available within a selected forecast horizon as generally claimed.

The Mullen reference is cited in connection with determining a probability of availability of a plurality of resources. As noted by the Examiner, the Mullen reference provides a detailed explanation of how a probability of availability for each of a plurality of resources can be determined. However, even if Mullen is combined with Cave, the cited references do not teach, suggest or describe determining a probability of agent availability by combining probabilities related to different segments of a task as claimed. In particular, Mullen does not discuss determining a separate probability related to an availability of a resource for different segments of a first task. Instead, Mullen uses various statistics, not probabilities of segments of a task, to obtain a probability of availability for each of a plurality of resources. Moreover, even if Mullen is only cited for disclosing a probability, combining the discussion of Mullen with that of Cave does not provide a disclosure of the claimed invention. In particular, such a combination omits the claimed feature of determining a separate probability for different segments of one task and then combining those separate probabilities.

Accordingly, the proposed combination of the Cave '490 and the Mullen references does not teach, suggest or describe each and every element of the pending claims. In particular, the proposed combination of references does not disclose separately determining a probability of completing different segments of a first task related to the availability of a first resource and combining those probabilities to obtain a probability of agent arrival within the selected forecast horizon. Therefore, Claims 1-6 and 9-23 are not obvious, and the rejections of these claims should be reconsidered and withdrawn.

The Office Action combines the Cave '490, Mullen and Cave '419 references in connection with the rejections of Claims 7 and 8. The Cave '419 reference is cited by the Office Action in connection with disclosure of the use of weighted forecasts and variance computation. Although the Cave '419 reference does discuss the use of statistical parameters in connection with controlling the pacing of outgoing calls, there is no teaching, suggestion or description in that reference of separating a single task into segments, and then separately calculating a probability of completion for each of the different segments within a forecast time. Accordingly, the Cave '419 reference does not make up for the deficiencies in the disclosure of Cave with respect to the pending claims.

The Office Action rejects all of the pending claims as being directed to non-statutory subject matter. In particular, the final Office Action states that "these claims are interpreted as

software claims which are non-statutory.” (Final Office Action dated January 28, 2008, p. 3.) The Examiner provides no support for this assertion in the final Office Action or the Advisory Action. The Examiner is incorrect on this point. According to the USPTO OG Notice dated November 22, 2005, a claim is statutory if the final result achieved by the claimed invention is useful, tangible and concrete. The pending claims product a useful result because they provide a probability of an agent becoming available within a forecast horizon.

The Examiner also states in the Advisory Action that the claimed invention is not within the technological arts since all of the recited steps can be performed in the mind of a user. The Examiner’s suggestion that there is a “technological arts” requirement is incorrect. See for example, the OG Notice of November 22, 2005, which states “United States Patent Law does not support the application of a ‘technical aspect’ or ‘technological art’ requirement.” Therefore, the rejections of the claims as being directed to non-statutory subject matter should be reconsidered and withdrawn.

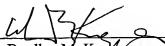
Because the references cited by the Examiner do not teach, suggest or describe separately determining for different segments of a first task a probability of completing each of the segments within a forecast horizon, in order to arrive at an overall forecast of the probability of agent availability within the selected forecast horizon as generally claimed, the rejections of the claims as obvious should be reconsidered and withdrawn. In addition, because the claimed invention provides a useful, tangible result, the claims are directed to statutory subject matter, and the rejections under 35 U.S.C. §101 should also be reconsidered and withdrawn.

The application now appearing to be in form for allowance, early notification of same is respectfully requested. The Examiner is invited to contact the undersigned by telephone if doing so would be of assistance.

Respectfully submitted,

SHERIDAN ROSS P.C.

By: _____


Bradley M. Knøpper
Registration No. 44,189
1560 Broadway, Suite 1200
Denver, Colorado 80202-5141
(303) 863-9700

Date: _____

